

CHAPTER 5

YEAR END STATISTICS

The Office of the Independent Police Auditor (IPA) and the San José Police Department Internal Affairs Unit (IA) are separate offices available for the public to file complaints against members of the San José Police Department (SJPD). The IPA is an oversight office that monitors and tracks investigations while they are being investigated by IA. The IPA also reviews and audits cases after IA has completed its investigation. Even though the IPA is not the primary investigatory agency, it does have the authority to attend IA interviews of subject and witness officers. In addition, the IPA has the authority to request additional investigation after the case has been closed as part of the audit process.

This chapter will discuss the different types of cases that were received from January 1, 2001 through December 31, 2001. It will also discuss the allegations in the cases filed, the findings, and the discipline imposed. The

analysis is only statistical and should not be used to deduce specific and/or conclusive results from the data.

POLICE CONTACT

In the year 2001, the SJPD recorded approximately 525,000 police contacts with citizens. This total includes all calls for service and self-initiated contacts by police officers. Of the 525,000 citizen contacts, less than 5% resulted in an arrest, and less than 500 citizen and police contacts resulted in the citizen contacting the IPA or IA.

HOW THE COMPLAINT PROCESS WORKS

All contacts from the public are documented as cases. Cases are further divided into several classifications such as: Formal, Informal, Procedural, Policy, and Inquiry, which are resolved before they become a complaint. A complaint is an act of expressed

dissatisfaction, which relates to department operations, personnel conduct, or unlawful acts.¹

Typically, IA conducts administrative investigations that are generally adjudicated through the department. However, in some cases, IA may be required to conduct a parallel investigation with a criminal investigation. Generally, IA investigates most allegations involving officer misconduct. Investigators at IA are fact finders only. They do not sustain a complaint, nor do they recommend discipline. In cases where the IA investigator concludes that the investigation may support sustainable allegations, the investigation is sent to the subject officer's chain of command. The commanding officer reviews the investigations and/or conducts further investigation to determine if the complaint should be sustained. In cases involving significant misconduct, the case may be sent to the Disciplinary Review Panel to assist the Chief of Police in determining the

appropriate level of discipline to be recommended to the City Manager.

Once an investigation is completed, a copy of the investigation is sent to the IPA for auditing.

After the IPA receives the copy of the closed investigation, the IPA has two weeks to review it. If the IPA determines that there is an area of concern with the investigation during this two-week period, the IA commander is notified and the two-week time line is stayed. Notifications and/or closing letters are held until the area of concern is satisfied, or the case is re-opened for further investigation. If the IPA makes no request during the two-week period, IA proceeds with sending the closing letters/ notices to the complainant and subject officer.

CASE CLASSIFICATION

There are seven case classifications: Formal, Informal, Policy, Procedural, No Boland, Inquiry, and Citizen Contact. A Formal complaint may be citizen-initiated (CI) or department-initiated (DI),

which is a complaint initiated by the Chief of Police. An Informal² complaint involves an allegation of minor transgressions. An Informal complaint is handled by bringing the matter to the attention of the subject officer's supervisor. A Policy³ complaint relates to an established policy properly employed by the officer, which the complainant believes to be inappropriate or invalid. A Procedural⁴ complaint is one that after the initial investigation, it is determined that the subject member acted reasonably and within department policy and procedure given the specific circumstances, and that despite the allegation of misconduct, there is no factual basis to support the allegation. A No Boland⁵ case is a case that is closed after 30 days from the date the case was received due to the complainant failing to sign the Boland Admonishment. State law requires that the complainant signs a Boland Admonishment form in order to have the complaint fully investigated. An Inquiry⁶ refers to a case that is immediately resolved to the

satisfaction of the citizen, without requiring a more extensive investigation. A Citizen Contact is a case that does not involve an expressed dissatisfaction with police services provided by a San José police officer.

The reasons for classifying the cases into different types are: (1) to streamline the investigative process so that cases, which do not require a full investigation are resolved sooner while the cases requiring more time are given appropriate time to investigate; (2) to track Formal, Informal, and Procedural complaints by officers' names as part of an "Early Warning" system that identifies those officers qualifying for Intervention Counseling; (3) to comply with motions for discovery in criminal and civil proceedings; and (4) to identify patterns or trends so that recommendations can be made to change an existing policy or procedure. Illustration B shows a breakdown of the total number of cases (461) received from January 1 through December 31, 2001 by the type of contact and the office contacted.

Illustration A: Type of Cases

Type of Cases	IPA Intake	IA Intake	Total Cases
Complaints	74	184	258
No Boland and Withdrawn Cases	11	19	30
Inquiry (Cases immediately resolved)	25	93	118
Citizen Contacts (Informational)	30	25	55
Total Cases in 2001	140	321	461

Illustration C reflects the cases received from January 1 through December 31 for the years 1997, 1998, 1999, 2000, and 2001 at the IPA and IA combined for each year. In 2001, the IPA received

140 cases while IA received 321 cases. The total cases received for both offices decreased from 694 in 2000 to 461 in 2001, a 34% decrease.

Illustration B: Type of Complaints

Type of Complaints	IPA Intake	IA Intake	Total Cases
Formal: Citizen-Initiated Complaints	24	82	106
Formal: Department-Initiated Complaints	0	37	37
Informal Complaints	17	32	49
Procedural Complaints	26	31	57
Policy Complaints	7	2	9
Total Complaints in 2001	74	184	258

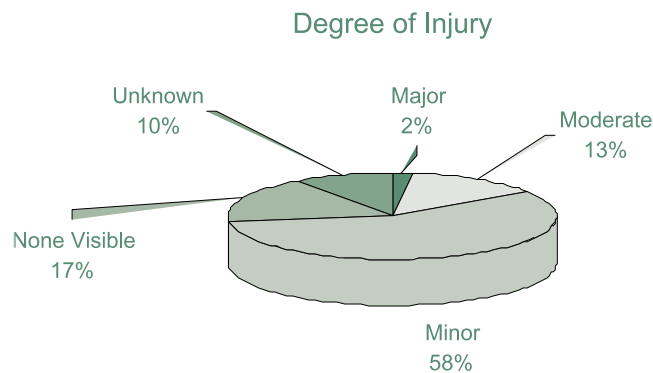
Illustration C: IPA Intake vs. IA Intake

Intake Received	Time Period				
	1997	1998	1999	2000	2001
IPA Cases	127	249	229	251	140
IA Cases	319	500	590	443	321
Total Cases Received*	446	749	819	694	461
Percentage of IPA Received**	28%	33%	28%	36%	30%

ANALYSIS OF UNNECESSARY FORCE COMPLAINTS

In the year 2001, there were 143 Formal complaints received between January 1 and December 31. This is a decrease of 77 Formal complaints over last year's figures. Of the 143 Formal complaints, 52 were classified as Unnecessary Force (UF) complaints. This is a decrease of 32 UF complaints, or 38%, from the year 2000. Because each complaint may contain more than one allegation, there were 92 UF allegations this year. This is a decrease of 37 UF allegations, or 29%, from last year.

Unnecessary Force complaints are divided into two categories: Class I and Class II. A Class I case involves serious bodily injury.⁷ All others are Class II cases, which include complaints in which the complainant did not require immediate medical care. Of the 52 UF complaints filed, six were Class I, and the remaining 46 were Class II complaints. In Illustration D, the Degree of Injury resulting from the alleged use of force ranged from minor to

Illustration D: Degree of Injury

major and included categories for “None Visible” and “Unknown” degrees of injury. For example, a citizen alleged that the officer pushed him/her to the ground and stepped on his/her hand, causing scrapes, bruises, and a swollen hand. This is counted as a minor injury. In 2001, there were 52 UF cases with the following distribution of injuries: 2% major injuries, 13% moderate, 58% minor, 17%

with no visible injury, and 10% with unknown degree of injuries.

Throughout the years, minor injuries remain the highest degree of injuries alleged by the complainant. In addition, the major degree of injuries dropped from 15% in 2000 to 2% in 2001, while the moderate degree of injuries increased from 6% in 2000 to 13% in 2001. Overall, 85% of all reported UF allegations involved

minor, no visible, or unknown injuries.

SUSTAINED RATE

In the year 2001, 297 out of 113 Formal CI closed cases were sustained, which resulted in a 26% sustained rate, see Illustration E. The Formal CI cases sustained are up from the 12% sustained rate in the year 2000.

In contrast, 24 out of 35 Formal DI closed cases were sustained, a 69% sustained rate. This rate is down from the 76% sustained rate in the year 2000. It should be noted that DI complaints include both internal and external matters. An external matters is where a citizen brought the incident to light, and internal

Illustration E: Formal Cases Sustained

Formal Complaints	Cases Closed	Cases Sustained	Sustained Rate
Citizen Initiated (CI) and Citizen Nexus	113	29	26%
Department Initiated (DI)	35	24	69%
Total	148	53	36%

matters involve personnel issues such as tardiness, abuse of sick leave, etc. The combined sustained rate for Formal cases overall is 36%, which is an increase from last year's combined sustained rate of 24%.

AUDIT CRITERIA OF FORMAL COMPLAINTS

Gathering data, monitoring and auditing investigations to ensure the highest level of quality are of great importance. With this in mind, the IPA developed a checklist for the collection of data and a process for evaluating the quality of the investigations to insure that the data was captured consistently. The objective is to maximize the availability of data entered and secured in the IPA's computer databases.

This process allows for consistency between auditors and provides a database that can be manipulated and randomly searched for critical trends and patterns. The database is designed to highlight the critical elements, actions, and aspects of

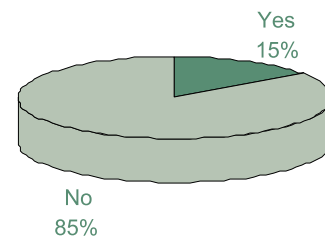
an investigation, providing the IPA with the capability to capture the trends and patterns. The database was also designed to capture the nature of the complaint, which is a significant capability, by using different auditing criteria for the different complaint classifications: Formal, Procedural, No Boland, Informal, Policy, and Inquiry. While every complaint is important, this section provides a synopsis of the Formal complaint audits only because of their heightened severity.

FORMAL COMPLAINTS

The SJPd uses the Formal complaint classification to address serious violation of department policy, procedures, rules, or regulations by its officers. From January 1 through December 31, 2001, there were 73 Formal cases audited by the IPA. Of these, 28 complaints resulted from a call for service, 20 were self-initiated by the subject officer, 17 were traffic related, and eight were classified as other.

It is important to understand that the 73 Formal cases represent the number of investigations completed by IA and audited by the IPA in 2001. This total may differ slightly from the total number of complaints filed throughout 2001 because some cases may have been filed in 2000 and completed in 2001, while others that were filed in 2001 may still be under investigation.

Illustration F: Request for Further Action



DID THE IPA REQUEST FURTHER ACTION FROM IA?

The IPA requested further action from IA in 12, or 15%, of the Formal cases it reviewed. Requests varied from reopening an investigation to providing the IPA with additional information or documentation. Although the

number of complaints varies from year to year, this year marked an increase from last year's percentage of 6%.

DID THE IPA AGREE WITH THE FINDING OF THE COMPLAINT?

This section reflects the number of times the IPA agreed or disagreed with the resolution of the complaint. The IPA disagreed with the finding of the investigation in 4, or 5%, of the 78 Formal cases audited between January 1 and December 31, 2001. In 2000, the IPA disagreed with 2% of the Formal cases.

Illustration G: Finding of the Complaint

Agreed	74	95%
Disagreed	4	5%

Even though the IPA may disagree with a case resolution for a number of reasons, in most cases where there is a disagreement, weight given to the credibility and/or witnesses appears to have been the difference.

DISAGREED CASES BY THE IPA

Case #1 – The complainant alleged that he was given a citation in a private parking lot for impeding traffic. The complainant alleged that he was initially just given a warning, but when he asked the officers for their names, he was given a citation. The complainant alleged that he should not have received a citation on private property, and that the officers failed to provide him with their names and badge numbers. The findings by the SJPD exonerated the officers. The IPA disagreed because the officers did not properly identify themselves to a civilian when requested to do so.

Case #2 – Complainants alleged that an officer refused to let one of the complainants use the officer's pen to write his name and badge number down. When the other complainant asked for his name and badge, the officer allegedly pointed at his badge and said, "Here, here." The IPA disagreed because the officer failed to properly provide his name and

badge number in compliance with department policy.

Case #3 – The complainant alleged that officers twisted his arms and handcuffed him for no reason. When the complainant asked for the officers' names, they allegedly refused to provide them. The IPA disagreed with the investigation conducted by IA because the issue of the officers' failure to properly identify themselves was not covered in the IA investigation.

Case #4 – The complainant alleged that officers unlawfully searched his home after he was handcuffed and left in the rear seat of the patrol car. The complainant alleged that no warrant was shown to him, and no permission to search was acquired. The findings by the SJPD exonerated the officers. The IPA disagreed because the evidence in this case supports a sustained finding against one of the officers. The evidence showed that the officer exceeded the scope of his protective sweep search.

DISCIPLINE IMPOSED

Of the 146 cases closed in this reporting period, January 1 through December 31, 2001, discipline was imposed in 55 cases, see Illustration H. Discipline is only imposed on Formal complaints, which are the most serious misconduct complaints. This type of complaint is either initiated by a citizen (Citizen-Initiated – CI complaints) or by the Chief of Police (Department-initiated – DI complaints). In

Illustration H, the disciplines are listed by increased level of severity. When an officer is retired from the department, the open investigation is closed with a No Finding. The retired category is not a disciplinary action, but rather it is included for the purpose of tracking the number of officers who retire while the completion of a citizen complaint investigation is pending.

An officer receives discipline

based on the entire complaint and not based on each separate allegation. For example, an officer may have had three allegations sustained, but will receive only one discipline such as documented oral counseling, letter of reprimand, suspension, demotion, transfer, or termination. Also, an officer may receive training and/or counseling, even though the allegation in a complaint is not sustained.

Illustration H: Type of Discipline Imposed by Allegation

Type of Discipline Imposed	Allegations								
	F1	F2	FA	IP	MDP	RC	UA	UC	Total
Training and/or Counseling	0	0	0	7	0	0	1	1	9
Documented Oral Counseling (D.O.C.)	0	1	0	11	4	1	0	4	21
Letter of Reprimand (L.O.R.)	1	0	1	5	0	0	0	2	9
10-Hour Suspension	0	0	0	1	0	0	0	3	4
20-Hour Suspension	0	0	0	1	0	1	0	2	4
40-Hour Suspension	0	0	0	0	0	0	0	2	2
80-Hour Suspension	0	0	0	0	0	0	0	2	2
160-Hour Suspension	0	0	0	0	0	0	0	1	1
Retired	0	1	0	0	0	0	0	0	1
Resigned	0	0	0	0	0	0	0	1	1
Terminated	0	0	0	0	0	0	0	1	1
Total Allegations	1	2	1	25	4	2	1	19	55
F1 = Unnecessary Force -Minor F2 = Unnecessary Force - Major FA = Failure to Act IP = Improper Procedure MDP = Missing/Damaged Property RC = Rude Conduct UA = Unlawful Arrest UC = Unofficerlike Conduct									

Illustration I: 5 Year - Type of Discipline Imposed

Type of Discipline Imposed	1997	1998	1999	2000	2001	Total	%
Training and/or Counseling	19	20	11	22	9	81	25%
Documented Oral Counseling (D.O.C.)	15	23	15	35	21	109	33%
Letter of Reprimand (L.O.R.)	13	11	7	5	9	45	14%
10-Hour Suspension	4	4	1	1	4	14	4%
20-Hour Suspension	5	3	5	1	4	18	6%
40-Hour Suspension	2	2	6	0	2	12	4%
80-Hour Suspension	1	2	2	1	2	8	2%
100-Hour Suspension	0	1	0	0	0	1	0%
120-Hour Suspension	2	1	0	0	0	3	1%
160-Hour Suspension	3	1	2	0	1	7	2%
13 Month Suspension	0	0	0	0	0	0	0%
Demotions / Transfers	0	0	1	0	0	1	0%
Terminations	0	1	2	0	1	4	1%
Retired	3	3	2	3	1	12	4%
Resigned	6	5	0	0	1	12	4%
Total Discipline Imposed	73	77	54	68	55	327	100%
%	22%	24%	17%	21%	17%	100%	

In Illustration H, the data reflects the type of allegation where discipline was imposed. In Illustration I, the three types of discipline imposed in 2001 for Formal cases with the highest frequency are: Training and/or Informal Counseling (9), Documented Oral Counseling (21), and Letter of Reprimand (9). Illustration I also depicts five years of Formal disciplines for cases closed from January 1 through

December 31, 1997, 1998, 1999, 2000, and 2001. Illustration I shows that the disciplines imposed most frequently are Training and/or Counseling, Documented Oral Counseling, Letter of Reprimand, and Suspension.

INTERVENTION COUNSELING

The Intervention Counseling (IC) process is an early warning

system used for identifying and/or correcting possible errant behavior. The process is designed to identify officers that receive three or more Formal complaints or a combination of five or more complaints of any type within a 12-month period. The process for initiating a counseling session used to be dependent on the completion of an investigation, however, IA is now in the practice of scheduling and holding coun-

selling sessions when the criteria has been met, even if a case(s) is still open. Once an officer, who has met the above criteria, has been identified, he/she is required to attend an informal counseling session. Counseling sessions include the Deputy Chief of the subject officer's bureau, the IA Commander, and the officer's immediate supervisor. This non-disciplinary, informal counseling session involves a review of the complaints against the subject officer and is done without regard to the finding. This meeting is intended to be a proactive attempt to address real or perceived unacceptable behavior before it becomes a problem. Because this is an informal process, no formal record is made of the substance of the counseling session, and only the fact that the officer was counseled is tracked. This past year, 12 officers received Intervention Counseling.

Our data shows that the twelve officers who received IC in 2001 did not receive any subsequent complaints after their IC sessions. In 1999, a total of 15 officers

received counseling, and five did not receive any subsequent complaints after their IC sessions.

SUPERVISOR'S INTERVENTION PROGRAM

The Supervisor's Intervention Program (SIP) embraces the concept of the "Early Warning System" under which the Intervention Counseling Program is instituted. As part of this system, the SIP aims to assist supervisors in tracking complaint histories of their subordinates. This program enables supervisors to take a proactive approach by identifying trends and patterns of behavior in their teams, as well as develop risk management strategies. The following is the current criteria for the SIP:

- ◆ This policy applies to Citizen and Department initiated complaints.

- ◆ When the team assigned to a supervisor receives three or more complaints within 6 months, the IA informs the supervisor's chain of command

that the supervisor meets the criteria to participate in the SIP—the supervisor's chain of command consists of the lieutenant up to the deputy chief.

- ◆ During the supervisor's intervention session, the subject supervisor meets with the aforementioned chain of command and the IA Commander.

- ◆ "Unfounded" cases are excluded from the SIP criteria.

- ◆ Officers working temporarily under another supervisor will track with the regularly assigned supervisor.

- ◆ When more than one officer is named in a complaint, it is counted as only one towards meeting the SIP criteria.

- ◆ This criteria applies to a 6-month tracking period regardless of shift change. In other words, once a subordinate receives a complaint, the

supervisor remains on the case even when he/she no longer supervises the named officer.

The utilization of this process does not imply that the subject member has in fact committed the transgression as described by the complainant.

available to process the concerns of the complainant.

⁵ Boland Admonishment. CA. Penal Code Section 148.6.

Since the program became effective on March 15, 2001, four supervisors have met the 3-case criteria and have been given counseling.

³ San José Duty Manual, Section C1721, Policy Complaint defined: A complaint which pertains to an established policy, properly employed by a Department member, which the complainant understands but believes is inappropriate or not valid.

⁶ San José Duty Manual, Section C1703, Inquiry defined: Citizen contact with a Department member regarding an issue of concern that is immediately addressed and resolved to the satisfaction of the citizen. A concern that is not satisfactorily resolved can become a complaint.

END NOTES

¹ San José Duty Manual, Section C1703, Complaint defined: A complaint is an act of expressed dissatisfaction, which relates to Department operations, personnel conduct, or unlawful acts.

² San José Duty Manual, Section C1716, Informal Complaint defined: It is determined that the allegation involves minor transgression that may be handled by bringing the matter to the attention of the subject member's supervisor and chain of command.

⁴ San José Duty Manual, Section C1711, Procedure Complaint defined: (A) After the initial investigation, it is determined that the subject member acted reasonably and within Department policy and procedure given the specific circumstances and the facts of the incident and that, despite the allegation of misconduct, there is no factual basis to support the allegation. (B) The allegation is a dispute-of-fact case wherein there is no independent information, evidence, or witnesses available to support the complaint, and there exists another judicial entity which is

⁷ CA. PC 243.4 F (4). "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; wound requiring extensive suturing; serious disfigurement.